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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,706	09/15/2003	Morris E. Smith	3244	1024

7590 08/23/2005

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EXAMINER
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SORKIN, DAVID L

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 08/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/662,706

Applicant(s)

SMITH ET AL.

Examiner

David L. Sorkin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 11-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Group I, claims 1-10 and 15 in the reply filed on 08 August 2005 is acknowledged. Applicant argues that "Groups I and II are not directed to independent and distinct subject matter". However, the inventions need not be "independent" for restriction to be proper. See MPEP 806.05 regarding proper restrictions in situation where the inventions are "distinct", but not "independent". In the instant case, the examiner agrees the inventions are not "independent" but maintains that they are "distinct".

The requirement is still deemed proper and is therefore made FINAL.

### ***Information Disclosure Statement***

2. No document corresponding to the search report listed on the 02 May 2003 IDS was received. Non-English references for which applicant has failed to supply the required statement of relevance have not been considered.

### ***Specification***

3. On page 1, line 21: "4,876,053" apparently should read - - 4,876,653 - -.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-10 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention:

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6. In claim 1, the phrase "wherein continual control of the concentration of the measured fluid component is the blender fluid volume" is ungrammatical and unclear.

7. In claim 8, the phrase "various other industrial fluids" is vague. It is unclear if this phrase includes all fluids or, if not, what fluids it excludes.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1-10 and 15 are rejected under 35 U.S.C. 102(a & e) as being anticipated by Jungmann et al. (US 2003/0012081). Regarding claim 1, Jungmann ('081) discloses a method for blending two or more fluid components (see paragraph [0023]) comprising continuously measuring, accumulating, and storing information on at least N-1 of the components blended since the start of the operation (see [0027], [0029], [0037], [0061]); calculating the concentration of at least N-1 fluid components in the total blended volume of the fluid (see [0063] and [0072]); continuously comparing the calculated concentration of the fluid components in the total blended volume against a blend recipe for fluid components (see [0022], [0035], [0036] and [0074]), and continually adjusting flow rates for at least one fluid component to achieve the desired concentration of each

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component in the total blended volume, whereby continual control of concentration of the measure component in the total blended fluid volume (see [0035], [0036] and [0074]). Regarding claim 2, information is received at the start of the blending process including a blend recipe (see paragraph [0022]). Regarding claim 3, flow of individual components is initiated according to the blend recipe (see [0023]). Regarding claim 4, flow is terminated at the end of the process (see [0075]). Regarding claim 5, the blend process is terminated based one information received at the start of the blending process and during the blending process (see [0075]). Regarding claims 6 and 7, information is communicated by a program logic controller (see [0039]). Regarding claim 8, the fluid is an industrial fluid (see [0003]). Regarding claim 9, flow is measured by a flow meter (202). Regarding claim 10, the fluid component rate is controlled using a control valve (108). Regarding claim 15, Jungmann ('081) discloses a method for blending two or more fluid components (see paragraph [0023]), comprising receiving information about a blend recipe into a system control means (see [0022]), initiating flow of individual compoments by the system control means to a prescribed blend ratio (see [0023]), continuously measuring flows and calculating concentrations of the individual components in the total blended volume since the initiation of fluid flow (see [0027], [0029], [0037], [0061], [0063], [0072]); continuously comparing the calculated concentrations to the concentrations of the blend recipe and continuously adjusting flow rates based upon the comparisions to achieve and maintain the blend recipe concentrations (see [0022], [0035], [0036] and [0074]); and terminating the flow of the components based upon at least one of having reached a total blended volume that is

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at least the desired batch size and receiving an input signal to terminate blending (see paragraph [0075]).


**Conclusion**

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 571-272-1148. The examiner can normally be reached on 9:00 -5:30 Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
David L. Sorkin  
Primary Examiner  
Art Unit 1723

DLS